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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Novus Technologies, Inc.,
assignee of
Thomas & Betts International, Inc.

Serial No. 75642636

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Baron, LLP for Novus Technologies, Inc.

Susan R. Stiglitz, Trademark Examining Attorney, Law Office
103 (Michael Hamilton, Managing Attorney)

Before Seeherman, Hairston and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Novus Technologies, Inc., assignee of the original
applicant, Thomas & Betts International, Inc., has appealed
from the final refusal of the Trademark Examining Attorney
to register RESI-LINK as a trademark for "power, voice,
data management, security and audio network products;
namely electrical and electronic wire and cable, and

enclosures, ducts, floor boxes, connectors, terminals and panels, for electrical and electronic wire and cable."¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark RESLINK, previously registered for "telephone communication and cable television transmission services, namely, providing telephone and cellular voice/data communication and cable television transmission services to residential communities,"² as to be likely, when applied to applicant's goods, to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs.³ Applicant did not request an oral hearing.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative

¹ Application Serial No. 75642636, filed February 18, 1999, and asserting a bona fide intent to use the mark in commerce.

² Registration No. 2117857, issued December 2, 1997; Section 8 affidavit accepted. The registration as originally issued identified the services as "telephone communication, PBX dialing and cable television transmission services, namely, providing telephone and cellular voice/data communication and central office telephone switching services and cable television transmission services to commercial and residential communities." The references to PBX dialing and central office telephone switching services and commercial communities was deleted as a result of the registrant's Section 8 affidavit.

³ With her brief, the Examining Attorney has submitted dictionary definitions. We grant her request that we take judicial notice of them. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

With respect to the goods and services, the Examining Attorney asserts that they are closely related because "they are used together and providers of telecommunications services offer goods such as the applicant's goods in the performance of such services." Brief, pp. 4-5. In support of her position, she has submitted third-party registrations in order to show that goods of the type identified in applicant's application, and services of the type identified in the cited registration, can emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). The registrations she has highlighted in her brief, and

therefore can be assumed to be the evidence she considers most persuasive, are the following:

Registrations No. 2212316 for METROPHONE for, inter alia, cellular telephones and related subscriber equipment, namely, cellular telephone connectors and cords; cellular telephone accessories, namely, cellular modems and data cables; and telecommunication services, namely, wireless PBX services, wireless digital messaging services, and wireless facsimile mail services;

Registration No. 2245359 for TADIRAN for, inter alia, voice and data telecommunications equipment and software, namely, telephones, voice and data terminals, switches, central office, and private branch exchanges, networking software, servers, fiber optics cables and circuits; voice and data telecommunications services rendered by telephone, radio, wire, wireless, microwave, fiber optics, and satellite; and

Registration No. 2256395 for PRIMECO for, inter alia, telecommunications equipment, namely, modems, cables, computer connector; telecommunications services, namely, personal communication services.

She has also made of record excerpts from the NEXIS database which refer to companies which, inter alia, sell telecommunications equipment and offer telephone service. These stories include the following:

Inter-Tel, a telecommunications equipment provider, offers digital telephone systems and related software,

long-distance service,
computer/telephone integration, and
Internet telephony, usually in an
integrated package.

"Las Vegas Review-Journal,"
November 27, 1998

Plus, the company's package of services
includes Internet access and sale of
telecommunications equipment.

EATEL also was the first to offer local
telephone service in Baton Rouge to
both commercial and residential
customers....

"Greater Baton Rouge Business Report,"
April 28, 1998

Headline: Bell parent firm snares Conn.
company

SBC Communications provides telephone
service and directories, wireless
communications, telecommunications
equipment, paging and Internet access
through its Southwestern Bell, Pacific
Bell, Nevada Bell and Cellular One
brands.

"The Houston Chronicle," January 6,
1998

Headline: SBC completes merger with
Pactel for \$16.5B

Besides long-distance and local
wireline voice communications, the new
company offers wireless telephony,
paging and messaging services, Internet
access, cable television service,
telecommunications equipment and
directory advertising and publishing.

"Radio Comm. Report," April 7, 1997

Headline: AT & T CEO: Breakup to
streamline company

The huge conglomerate [sic] is the
biggest provider of long-distance
telephone services, manufactures
telecommunications equipment and makes

a wide variety of computerized
equipment ranging from cash registers
to automatic teller machines.
"South Bend Tribune," September 23,
1995

It is true that applicant's goods, as identified, include products with voice and audio network applications, while the cited registration includes telephone communication services, and therefore they can both be broadly described as telecommunications equipment and services. However, to demonstrate that goods and services are related, it is not sufficient that a particular term may be found which may generically describe the goods and services. See General Electric Company v. Graham Magnetics Incorporated, 197 USPQ 690 (TTAB 1977); Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd. 188 USPQ 517 (TTAB 1975). When we examine the specific items listed in the identifications, they do not appear to be related in a manner that would be likely to cause confusion. The products identified in applicant's application are electrical and electronic wire and cable, and enclosures, ducts, floor boxes, connectors, terminals and panels for electrical and electronic wire and cable. These do not appear to be consumer items; rather, they are the types of products that have a broad range of applications, some of which would include purchase and use by companies which

install voice and audio network systems. On the other hand, the cited registration is for providing telephone communication to residential communities. This is the type of service that would be offered to the general public for use in their residences. There is nothing to indicate that there would be any common purchasers except, perhaps, for an employee of a company that might, on the job, install applicant's products and who might also, at home, obtain services from registrant.

It appears to us that, because of the nature of the goods and services, they would be offered to different classes of consumers through different channels of trade. As such, it is unlikely that there would be any significant opportunity for confusion to occur. See *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992).

As for the third-party registrations, upon closer examination, we find that only one, for PRIMECO, arguably might include goods and services of the type listed in applicant's application and the cited registration.⁴ The PRIMECO registration includes "telecommunications

⁴ For example, the METROPHONE registration referenced by the Examining Attorney is limited to cellular telephone equipment, and the TADIRAN registration is for fiber optics cables, while applicant's goods are identified as electrical and electronic cable.

equipment, namely, telephones with paging, messaging and computing capabilities, modems, cables..." and telecommunications services, namely, personal communication services. Applicant's application includes electrical and electronic wire and cable which may be used by companies providing telephone communication services to residential communities. It is not at all clear, however, that "electrical and electronic wire and cable" is synonymous with telecommunications cable; for all the record shows, these may be functionally different types of cable, albeit with complementary uses for certain companies. This single registration is insufficient to show that applicant's goods and the cited registrant's services are of a type which may emanate from a single source.

Similarly, the newspaper articles, although they make reference to companies that provide both telephone services and telecommunications equipment, do so in a general manner. In fact, in each of the articles, the equipment is described only by the term "telecommunications equipment." Consumers reading these articles are not likely to analyze the term to consider all the different types of equipment that might be included under this general category, and thus they are not likely to view the articles as indicating that the companies which provide telephone services also

make electrical and electronic wire and cable, and enclosures, ducts, floor boxes, connectors, terminals and panels for electrical and electronic wire and cable.

We also note that, although applicant's and the registrant's marks are very similar, they are also highly suggestive. Thus, the cited registration is not entitled to a broad scope of protection. Consumers are simply unlikely to assume that all telecommunications services and equipment offered under these highly suggestive marks emanate from the same source.

In view of the differences in the goods and services, and particularly the different customers to which they are directed and the different channels of trade through which they are sold, and the highly suggestive nature of the marks, we find that the Office has not met its burden of proving that applicant's use of the mark RESI-LINK for its identified goods is likely to cause confusion or mistake or to deceive.

Decision: The refusal of registration is reversed.